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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

PEOPLE OF CITY OF LOS ANGELES
WHO ARE UN-HOUSED, AS A
CLASS REPRESENTED BY D.
JACOBS, as representative of a class of
unhoused persons who reside and resided
in the streets and on the sidewalks of the
City of Los Angeles,
Plaintiffs.

v.

KAREN BASS, ERIC MICHAEL
GARCETTI, PAUL KREKORIAN,
ROBERT BLUMENFIELD, NITHYA
RAMAN, KATY YAROSLAVSKY,
IMELDA PADILLA, MONICA
RODRIGUEZ, MARQUEECE-
HARRIS-DAWSON, JOHN LEE,
CURREN PRICE, HEATHER HUTT,
TRACI PARK, HUGO SOTO-
MARTINEZ, KEVIN DE LEON, TIM
Mc OSKER, MONIQUE CONTRERAS,
1"DOE" BROWN, ONE HUNDRED
UNKNOWN NAMED DEFENDANTS,
1-100,

Defendants.

CASE NO. 2:24-cv-09320 DOC (MAAx)
Assigned to: Hon. Judge David O. Carter, Ronald
Reagan Cthse, Ctrm 10A; Hon. Mag. Maria A. Audero,
Roybal Bldg, Ctrm. 880

DEFENDANT MONIQUE
CONTRERAS'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR
ALTERNATIVELY. PARTIAL
SUMMARY JUDGMENT

[Fed. R. Civ. P. 56]

[Filed concurrently with Separate Statement of
Uncontroverted Facts and Conclusion of Law;
Declarations of Monique Contreras and Eric
Melendez w-Exhibits; Request for Judicial Notice
w-Ford Decl and Exhibits; Notice of Lodging
Flashdrive and [Proposed] Order]

Date: Julv 14. 2025
Time: 8:30 a.m.
Crtrm.: 10A

Trial Date: Mav 12. 2026
Complaint Filed: October 29, 2024

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TO THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on July 14, 2026, at 8:30 a.m. or as soon thereafter as counsel may be heard in Courtroom 10A of the Ronald Reagan Federal Building and United States Courthouse, 411 West 4th Street, Room 1053, Santa Ana, CA 92701-4516, before the Honorable David O. Carter, United States District Judge, Defendant City of Los Angeles Monique Contreras will move this Honorable Court, pursuant to Federal Rule of Civil Procedure (“FRCP”) 56(c) for summary judgment as to all claims against Defendant Monique Contreras, or, alternatively, partial summary judgment, on the following grounds:

1. Defendant Monique Contreras is entitled to judgment as a matter of law on Plaintiff’s Claim 19, excessive force in violation of the Fourth Amendment because the undisputed evidence shows that Officer Contreras *never used any force* on Plaintiff. The Court has already made a finding of fact that Officer Contreras never used force on Plaintiff.
2. Defendant Monique Contreras is entitled to judgment as a matter of law on Plaintiff’s Claim 20, malicious prosecution in violation of the Fourth Amendment, because the undisputed evidence shows that there was probable cause for the Penal Code § 245(c) charge, and there is no evidence to show that Officer Contreras had any involvement in the filing of criminal charges. The Court has already made a finding of fact as to the probable cause for the charge.
3. In addition, Monique Contreras is entitled to judgment in her favor under the doctrine of qualified immunity.

This motion was filed following meet and confer efforts pursuant to Central District, Local Rule 7-3, on April 15, 2025. (*See* Declaration of Ty A. Ford at ¶ 7, filed concurrently).

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1 This motion is based on Plaintiff's Complaint, the Memorandum of Points and
2 Authorities attached hereto, the Separate Statement of Uncontroverted Facts and
3 Conclusions of Law; the Declarations of Ty A. Ford, Eric Melendez, and Monique
4 Contreras; the Request for Judicial Notice and Exhibits; the Notice of Lodging and
5 Exhibits; the Court's file and orders herein; and any other evidence presented at or
6 before the time of the hearing on this motion.

7
8 Dated: June 13, 2025

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On September 2, 2024, members of the Los Angeles Police Department, including Officer Monique Contreras (“Officer Contreras”), approached Plaintiff’s tent which was located on a sidewalk within 500 feet of a school. When the Officers attempted to speak with Plaintiff, he opened the tent and sprayed them with pepper spray, ran from his tent, and continued to pepper spray the Officers as they tried to approach him. Plaintiff eventually was apprehended, confessed to spraying the Officers with pepper spray, and was arrested. Plaintiff was not struck by Officers at any time and had no injuries on his person. Most of the incident is captured on body-worn camera. Criminal charges were filed and, at the arraignment hearing, Plaintiff’s competency was called into question and the matter was referred to the court’s Mental Health Division.

The only remaining Defendant who has appeared in the matter is Officer Monique Contreras, and the only remaining claims at issue are allegations of excessive force (Claim 19) and malicious prosecution (Claim 20), both brought under 42 U.S.C. § 1983.¹ The Court previously heard and denied Plaintiff’s Motion for Summary Judgement, on June 6, 2025 (Dkt. 54), and in doing so, examined the same video evidence that is submitted herewith the instant motion.

¹ “On October 29, 2024, Plaintiff filed his Complaint (Dkt. 1). On December 13, 2024, Defendants Monique Contreras, Karen Bass, and Paul Krekorian filed a Motion to Dismiss (Dkt. 16). On January 24, 2025, the Court granted Defendants’ Motion to Dismiss (Dkt. 26). The Court dismissed sixteen of the eighteen Defendants sued by Plaintiff. The only remaining Defendants are Los Angeles Police Officers Contreras and Brown. The Court dismissed all claims and allowed Plaintiff leave to amend only claims 19 (excessive force in violation of the Fourth Amendment) and 20 (malicious prosecution in violation of the Fourth Amendment). Claims 1 through 18 were dismissed with prejudice. On February 7, 2025, Plaintiff filed a First Amended Complaint (Dkt. 32). On April 26, 2025, Plaintiff filed a Motion to Consolidate with Case No. 2:22cv-08010-DOC (Dkt. 42). The Court denied consolidation on May 22, 2025, as moot because Case No. 2:22cv-08010-DOC was closed (Dkt. 51). On May 5, 2025, Plaintiff filed [his ...] ‘Motion for Partial Summary Judgment On Issues Of Excessive Force and Of Malicious Prosecution (‘Motion’) (Dkt. 44).’ (Dkt. 54)

1 In the present case, there are no genuine triable issues of fact. Based on the
2 evidence already presented to this Court in Plaintiff's Motion for Partial Summary
3 Judgment and Defendant Contreras's Opposition, the Court has already made the
4 requisite findings of fact that entitles Defendant Contreras to summary judgment on the
5 remaining two claims, as explained, *infra*. (See Dkt. 54, p. 2-4).

6 Defendant Contreras is entitled to summary judgment on both of Plaintiff's
7 remaining claims under 42 U.S.C. § 1983 for alleged violations of his Fourth
8 Amendment rights for excessive force and malicious prosecution because the
9 undisputed facts and evidence show that: (1) no force was ever used by Officer
10 Contreras on Plaintiff; and (2) Officer Contreras did not maliciously prosecute Plaintiff.
11 In ruling on Plaintiff's prior motion for summary judgment, the Court found that there
12 was probable cause to arrest and initiate the Penal Code Section 245(c) charge against
13 Plaintiff. (Dkt. 54 at p. 7-10).

14 **II. STATEMENT OF FACTS.**

15 On September 2, 2024, Officer Contreras and Officer Brown and driving in a
16 marked black and white police SUV. See Defendant's Undisputed Material Facts
17 ("UMF") #1. Officer Contreras, who is shorter than Officer Brown, was wearing a full
18 police uniform and a body-worn camera which captured part of the incident. UMF #2.
19 Officer Brown also was wearing a full police uniform but was not wearing a body-worn
20 camera. UMF #3.

21 Officer Contreras and Officer Brown observed Plaintiff's tent erected on a
22 sidewalk within 500 feet of a school in violation of Los Angeles Municipal Code
23 ("LAMC") section 41.18(e). UMF #4. Officer Contreras recognized Plaintiff's tent and
24 knew that he previously had been warned, cited, and booked for violating LAMC
25 section 41.18(e). UMF #5. The Officers parked and exited their police vehicle to
26 investigate. UMF #6.

27 ///

28 ///

1 The Officers approached Plaintiff's tent and asked him to exit his tent. UMF #7
2 However, Plaintiff opened the flap of the tent and sprayed them with pepper spray.
3 UMF #8. Plaintiff, who was wearing only shorts and no shirt, then ran from his tent and
4 continued to pepper spray towards the Officers as they tried to approach him. UMF #9.
5 Plaintiff also ran into the street to their police vehicle and pepper sprayed it. UMF #10.
6 The Officers requested back-up to assist. UMF #11. Plaintiff then fled from the area and
7 the Officers chased him on foot. UMF #12.

8 Additional Officers responded and eventually took Plaintiff into custody. UMF
9 #13. After he was taken into custody and prior to being transported from the scene,
10 Plaintiff admitted that he sprayed the Officers with pepper spray. UMF #14. Plaintiff
11 was arrested for violating California Penal Code section 245(c) [assault with a deadly
12 weapon on a peace officer]. UMF #15.

13 Plaintiff did not have any visible injuries on his person and no injuries were
14 reported. UMF #16. Officer Contreras did not draw her police baton during the incident,
15 and did not strike or make physical contact with Plaintiff. UMF #17.

16 On September 4, 2024, the City Attorney's Office filed a misdemeanor
17 complaint, that is signed by the prosecuting Deputy City Attorney, against Plaintiff
18 charging him with violations of California Penal Code sections 148(a)(1) [resisting,
19 delaying or obstructing officer], 240/241(c) [assault on peace officer], 22810(g)(1)
20 [unlawful use of tear gas] and LAMC section 41.18(e) [sitting/sleeping/lying on
21 sidewalk within 500 feet of school/daycare]. UMF #18. Plaintiff appeared in court on
22 September 4, 2024, for an arraignment and plea hearing. UMF #19. At the Arraignment
23 hearing, Plaintiff's mental competency was called into question, the criminal
24 proceedings were suspended, and a psychiatrist was appointed to evaluate Plaintiff's
25 competency. UMF #20.

26 The matter was then transferred to the state court's Mental Health Division for
27 further proceedings. UMF #21. After evaluation, the Mental Health Division granted
28 Plaintiff diversion on all charges with certain mental health treatment conditions and

1 ordered him conditionally released on October 2, 2024. UMF #22. All charges were
2 ultimately dismissed pursuant to Penal Code section 1385 (interest of justice) on
3 October 23, 2024. UMF #23.

4 No LAPD police officers, including Officer Contreras, were involved in or had
5 any input in the court process in any manner. UMF #24.

6 In its Order Denying Plaintiff's Motion for Summary Judgment (Dkt. 54), the
7 Court made the following findings of fact regarding what is seen on the Body-Worn
8 Camera videos ("BWC") and other exhibits submitted by Defendant Contreras:²

9 Officer Contreras' BWC from September 2, 2024 shows the following. *See*
10 Ex. 2 (Dkt. 48). Contreras put on gloves and then began checking to see if
11 anyone was inside two tents erected on the sidewalk. Contreras was with her
12 partner, Officer Brown, who was not wearing a BWC. Officer Brown tapped
13 her baton on the pole of a tent corner several times. Jacobs then lifted the
14 tent flap, pointed a spray can at Brown, and sprayed it at her from inside the
15 tent. Brown moved away from the tent and Jacobs went back in the tent.
16 Contreras asked him, "Did you just spray pepper spray at me?" In response,
17 Jacobs opened the tent flap again and yelled "get away from me." His head
18 and shoulders then came out of the tent and he again sprayed a can towards
19 Brown. The officers told him to stop spraying them and called for backup.
20 Jacobs continued to yell at the officers to get away from him and then fully
21 came out of his tent. Jacobs quickly stepped towards Contreras with the can
22 held out. Contreras then pulled out her taser and warned that Jacobs was
23 "going to get tased." Jacobs then ran away from Contreras and Brown,
24 stopped further down the sidewalk, and continued to yell at the officers. He
25 shouted "fucking bitch" and "get the fuck out of here" at the officers.
26 Contreras warned Jacobs to stay away. He walked back closer to his tent and
27 Contreras again threatened him with her outstretched taser. Jacobs then
28 walked in the street to the officers' patrol car and Brown stated that he was
pepper spraying the patrol car. The officers told him not to spray inside their
car. Jacobs continued to yell insults at the officers and told them to "stop
banging on my shit" and that he's "allowed to be here." Jacobs also yelled
"you're not real" and "go back to community college." Jacobs walked back

² For the Court's convenience and clarity, in the instant motion, Defendant has submitted the same exhibits using the same exhibit numbers as in Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment. (Dkt. 47).

1 near his tent and Brown stated, “he’s got pepper spray on him.” Jacobs then
2 ran away down the sidewalk away from the officers. At this point, Officer
3 Chavez had arrived, and all three officers ran after Jacobs. Additional police
4 cars arrived, and sirens are heard. The officers were not able to catch up to
5 Jacobs. Contreras said to Chavez, “It’s David. He pepper-sprayed me and
6 Bri but it didn’t reach us.” The officer responded, “oh shit...still attempt.”
Contreras continued to walk around the block and a police helicopter can be
heard overhead. Contreras’ BWC is 7 minutes and 44 seconds long. *Id.*

7 Officer Chavez’s BWC confirms the second half of Contreras’ BWC. *See*
8 Ex. 3 (Dkt. 48). Officer Espinoza’s BWC captures the eventual arrest of
9 Jacobs outside a store along the Venice Boardwalk as follows. *See* Ex. 4
10 (Dkt. 48). Officers ran up to Jacobs, Jacobs sat on the ground, and officers
11 handcuffed him. Jacobs said, “I didn’t do anything wrong to them...I just
12 sprayed something at them...to keep them away from my stuff, they were
13 banging on it, they were breaking my things...they were breaking my stuff.”
14 Officers then walked Jacobs off the Boardwalk and to a police car on a
15 nearby street. The officer walking with Jacobs asked him what he sprayed at
16 the officers and Jacobs responded “pepper spray...because they were
17 banging on my tent, they can’t be doing that...I’m protecting myself.”
Jacobs continued to say that officers were messing with his stuff and
“banging” on his tent and stuff. He also stated repeatedly that he was
“protecting myself from them ripping my stuff down.” Officers then put
Jacobs in the police car and the BWC ends after 10 minutes and 44 seconds.
Id.

18 Officers arrested Jacobs for violation of California Penal Code §245(c),
19 assault with a deadly weapon or by any means likely to produce great bodily
20 harm on a peace officer, and transported him to jail. Ex. 1 (Dkt. 47-3). On
21 September 4, 2024, the Los Angeles City Attorney’s Office charged Jacobs
22 with the following misdemeanors: California Penal Code § 148(a)(1), §
23 240/241(c), § 22810(g)(1), and Los Angeles Municipal Code § 41.18(e). Ex.
24 5 (Dkt. 47-5). Jacobs appeared in court and was arraigned on September 4,
25 2024. Ex. 6 (Dkt. 47-6). At the arraignment, Jacobs’s appointed public
26 defender declared a doubt as to his mental competence and criminal
27 proceedings were suspended. *Id.* Ultimately, Jacobs was granted mental
28 health diversion, released on October 2, 2024, and all counts were dismissed
through diversion on October 23, 2024. Ex. 8 (Dkt. 47-8); Ex. 9 (Dkt. 47-9).

Id. at p. 2-4.

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1 **III. LEGAL STANDARDS ON SUMMARY JUDGMENT.**

2 The “purpose of summary judgment is to ‘pierce the pleadings and to assess the
3 proof in order to see whether there is a genuine need for trial.’” *Matsushita Electrical*
4 *Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. at 574, 587 (1986). On motions for
5 summary judgment, the moving party bears the initial burden of establishing the absence
6 of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24
7 (1986). The moving party may satisfy its burden by “‘showing’ – that is, pointing out to
8 the district court – that there is an absence of evidence to support the nonmoving party’s
9 case.” *Celotex*, 477 U.S. at 325.

10 If the moving party meets its initial responsibility, the burden then shifts to the
11 opposing party to establish that a genuine issue as to any material fact actually does exist.
12 *See Matsushita*, 475 U.S. at 586. The opposing party must demonstrate that the fact in
13 contention is material, *i.e.*, a fact that might affect the outcome of the suit under the
14 governing law, *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, (1986); *T.W.*
15 *Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987), and
16 that the dispute is genuine, *i.e.*, the evidence is such that a reasonable jury could return a
17 verdict for the nonmoving party, *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436
18 (9th Cir. 1987). A scintilla of evidence or evidence that is merely colorable or not
19 significantly probative does not present a genuine issue of material fact. *See Addisu v.*
20 *Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). Only genuine disputes “where the
21 evidence is such that a reasonable jury could return a verdict for the nonmoving party,”
22 will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248. The
23 Supreme Court has stated, “Where the record taken as a whole could not lead the trier of
24 fact to find for the nonmoving party, there is not genuine issue for trial.” *Matsushita*, 475
25 U.S. at 586-587. The mere existence of *some* factual dispute between the parties will not
26 defeat an otherwise properly supported motion for summary judgment. *See Anderson*,
27 477 U.S. at 247-248.

28 ///

Further, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380-381 (2007) [finding that a videotape of the incident eviscerated the plaintiff’s version of events and that the defendant officer was entitled to summary judgment].

IV. PLAINTIFF’S EXCESSIVE FORCE CLAIM FAILS BECAUSE THE UNDISPUTED EVIDENCE PROVES THAT DEFENDANT CONTRERAS NEVER USED ANY FORCE UPON PLAINTIFF.

In his 19th Claim, under 42 U.S.C. §1983 for a Fourth Amendment violation, Plaintiff alleges, “Defendants used excessive force against plaintiff by striking him with their baton(s), and thereby harmed, injured [him]...” (FAC, Dkt. 32 at ¶ 210). Police officers are allowed to use force to effect a detention or arrest or to protect the safety of themselves and others as long as the force is “objectively reasonable” under the circumstances. *Graham v. Connor*, 490 U.S. 386, 397 (1989). To determine whether the force used was reasonable, courts balance “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Id.* at 396 (citations omitted).

Here, the undisputed evidence proves that Defendant Officer Contreras did not strike Plaintiff with her baton, and, in fact, *used no force whatsoever*, never making any physical contact with Plaintiff by touching him or causing him to be touched by any means (the same is true for Officer Brown). UMF #19. The BWC video evidence shows that Officer Contreras did not use a police baton against Plaintiff. UMF ##6-17. The video evidence plainly shows that Officer Contreras did not draw her police baton and did not touch Plaintiff with it. UMF ##6-17. The video evidence further shows that Officer Contreras was not even close enough to Plaintiff to touch him with her police baton even if she had drawn it, which she did not. UMF ##6-17. The evidence further

1 shows that Plaintiff did not suffer or complain about any injuries from a police baton.
2 UMF #16.

3 In this Court's order denying of Plaintiff's Motion for Partial Summary
4 Judgment, the Court made findings of fact consistent with Defendant Contreras's
5 position:

6 Here, the question is first what, if any, force was used. The BWC evidence
7 contradicts. Plaintiff's declaration of the police interaction on September 2,
8 2024. At no time did Contreras or any other officer use her baton against
9 Plaintiff or make physical contact with Plaintiff in anyway. Brown hits her
10 baton against the corner pole of Plaintiff's tent several times. Contreras and
11 Brown held out a taser and a baton to warn Plaintiff to stay away from them
12 but neither used their weapons against Plaintiff. Contreras never took out her
13 baton. Plaintiff's version "is blatantly contradicted by the record" and "so
utterly discredited by the record that no reasonable jury could have believed
him" so the Court must adopt the version of the facts shown in the video
evidence. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

14 Plaintiff's statements to officers during his arrest confirm these facts.
15 Plaintiff never complains that he was hit or touched by officers but rather
16 repeatedly complains that they touched his tent and "stuff."

17 ... In short, Plaintiff argues force was used that never in fact occurred.
18 (Dkt. 54 at p. 7).

19 Thus, based on the undisputed facts, Defendant Contreras is entitled to summary
20 judgment on Plaintiff's 19th claim for excessive force.

21 **V. PLAINTIFF'S MALICIOUS PROSECUTION CLAIM FAILS BECAUSE**
22 **THE UNDISPUTED EVIDENCE PROVES THAT THERE WAS**
23 **PROBABLE CAUSE TO SUPPORT THE PENAL CODE § 245(c)**
24 **CHARGE.**

25 The Fourth Amendment applies to claims of unlawful search and seizure. *See e.g.*
26 *Graham v. Connor*, 490 U.S. 386 (1989). The Fourth Amendment also applies to
27 malicious prosecution claims in connection with a pretrial detention that is alleged to be
28 based charges lacking probable cause, and thus, are invalid. *See Chiaverini v. Cty of*

1 *Napoleon, Ohio*, 602 U.S. 556, 556 (2024). Unlawful “seizure” claims, including
2 malicious prosecution, based on the Fourth Amendment cease when the arrestee
3 appears before a court and is held to answer, *i.e.* an arraignment hearing. *See Wallace v.*
4 *Kato*, 549 U.S. 384, 389–92 (2007). The Fourteenth Amendment substantive due
5 process applies to claims after the arraignment, such as wrongful confinement and
6 malicious prosecution. *See Lee v. Cty of Los Angeles*, 250 F.3d 668, 683 (9th Cir.
7 2001).

8 In order to prevail on a Section 1983 claim based on malicious prosecution, a
9 plaintiff “must show that the defendants prosecuted [him] with malice and without
10 probable cause, and that they did so for the purpose of denying [him] equal protection
11 or another specific constitutional right.” *Freeman v. City of Santa Ana*, 68 F.3d 1180,
12 1189 (9th Cir.1995). The presence of probable cause is an “absolute defense” to
13 malicious prosecution. *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054-55 (9th Cir.
14 2009). Further, the filing of a criminal complaint immunizes the police officers from
15 liability, as the prosecutor’s decision to file criminal charges and to continue to
16 prosecute a criminal defendant is presumed to be based on the independent judgment of
17 the prosecutor in determining that probable cause exists. *See Smiddy v. Varney*, 665
18 F.2d 261, 266 (9th Cir. 1981) (“*Smiddy I*”). Plaintiff cannot, with any competent,
19 admissible evidence, rebut this presumption of prosecutorial independence or show a
20 lack of probable cause to arrest and prosecute him for the delineated offenses.

21 Here, after the Officers approached Plaintiff’s tent, Plaintiff opened the tent,
22 sprayed pepper spray at them, exited his tent, and continued to spray pepper spray in
23 their direction when they were trying to approach him and take him into custody. UMF
24 ##7-12. Plaintiff, who ran, was ultimately apprehended and taken into custody by other
25 Officers. UMF ##12-13. Plaintiff was arrested for violating California Penal Code
26 Section 245(c) [assault with a deadly weapon on a peace officer]. UMF #15. On
27 September 4, 2024, the Los Angeles City Attorney’s Office filed a misdemeanor
28 complaint against Plaintiff charging him with violations of California Penal Code

1 sections 148(a)(1) [resisting, delaying or obstructing officer], 240/241(c) [assault on
2 peace officer], 22810(g)(1) [unlawful use of tear gas] and Los Angeles Municipal Code
3 section 41.18(e) [sitting/sleeping/lying on sidewalk within 500 feet of school/daycare].
4 UMF #18. The Misdemeanor Complaint was signed by the prosecuting Deputy City
5 Attorney. UMF #18. To be sure, Defendant Contreras did not author the police report
6 regarding the incident with Plaintiff, nor did she have any direct involvement in his
7 arrest. UMF #13; Ex. 1. Certainly, given her lack of involvement in Plaintiff's physical
8 arrest and the filing of criminal charges, there is absolutely no evidence that Officer
9 Contreras acted with malice and for the purpose of denying Plaintiff his constitutional
10 rights.

11 As the evidence shows, there was ample probable cause to arrest Plaintiff's for
12 his assaultive actions towards the police Officers. Further, "[m]ost courts have found
13 tear gas, mace or pepper spray to be dangerous or deadly weapons capable of inflicting
14 great bodily injury" within the meaning of Penal Code Section 245(c). *People v. Blake*,
15 117 Cal. App. 4th 543, 557 (Cal. Ct. 2004), as modified (Apr. 16, 2004).

16 After his valid arrest, Plaintiff appeared in court on September 4, 2024, for an
17 arraignment and plea hearing. At the Arraignment hearing, Plaintiff's mental
18 competency was called into question, the criminal proceedings were suspended, and a
19 psychiatrist was appointed to evaluate Plaintiff's competency. The matter was then
20 transferred to the state court's Mental Health Division for further proceedings. After
21 evaluation, the Mental Health Division granted Plaintiff diversion on all charges with
22 certain mental health treatment conditions and ordered him conditionally released on
23 October 2, 2024. All charges were ultimately dismissed pursuant to Penal Code section
24 1385 (interests of justice) on October 23, 2024, as a condition of his "diversion" in his
25 Mental Health Division. There is no evidence that Officer Contreras, or any other
26 LAPD police officers, were involved in or had any input in the court process in any
27 manner. UMF #24.
28

1 As this Court pointed out in its order denying Plaintiff's Motion for Partial
2 Summary Judgment,

3 Normally, the filing of a criminal complaint by the prosecutor shields "those
4 who participated in the investigation or filed a report that resulted in the
5 initiation of proceedings" (here, Officer Contreras). *Awabdy v. City of*
6 *Adelanto*, 368 F.3d 1062, 1067 (9th Cir. 2004). "However, the presumption
7 of prosecutorial independence does not bar a subsequent § 1983 claim
8 against state or local officials who improperly exerted pressure on the
9 prosecutor, knowingly provided misinformation to him, concealed
10 exculpatory evidence, or otherwise engaged in wrongful or bad faith conduct
11 that was actively instrumental in causing the initiation of legal proceedings."
12 *Id.* ...

13 There is no doubt that there was probable cause for the misdemeanor counts
14 charged by the city attorney based on Plaintiff spraying officers with pepper
15 spray and fleeing the scene. Plaintiff does not sue the city attorney. He only
16 sues Officer Contreras for malicious prosecution. Thus, assuming the filing
17 of the criminal complaint does not shield Contreras, the questions are (1)
18 whether there was probable cause for Contreras to charge Plaintiff with PC
19 245(c) and, if there was not probable cause, (2) whether damages were
20 caused by that felony charge.

21 "Probable cause exists where 'officers have knowledge or reasonably
22 trustworthy information sufficient to lead a person of reasonable caution to
23 believe that an offense has been or is being committed by the person being
24 arrested.'" *Hollamon v. City of Los Angeles*, No. 24-341, 2025 WL 927310,
25 at *1 (9th Cir. Mar. 27, 2025) (quoting *United States v. Lopez*, 482
26 F.3d 1067, 1072 (9th Cir. 2007))....

27 PC 245(c) provides: "Any person who commits an assault with a deadly
28 weapon or instrument, other than a firearm, or by any means likely to
produce great bodily injury upon the person of a peace officer or firefighter,
and who knows or reasonably should know that the victim is a peace officer
or firefighter engaged in the performance of his or her duties, when the
peace officer or firefighter is engaged in the performance of his or her
duties, shall be punished by imprisonment in the state prison for three, four,
or five years." Cal. Penal Code §245(c).

Most courts have found tear gas, mace or pepper spray to be dangerous or
deadly weapons capable of inflicting great bodily injury." [*People v.*] *Blake*,

1 117 Cal. App. 4th [543] at 557 [(Cal. Ct. 2004)]. The California Court of
2 Appeal in *Blake* upheld a jury verdict finding that the defendant’s use of
3 pepper spray or mace during robberies was a dangerous weapon capable of
4 inflicting serious bodily injury. *Id.* Based on *Blake* and the undisputed facts
5 in the BWC video, the Court concludes that there was probable cause to
6 arrest and initiate the PC 245(c) against Plaintiff.

7 (Dkt. 54 at pp. 8, 10) [emphasis added].

8 Thus, as the Court has already found, there was probable cause as a matter
9 of law for the PC 245(c) charge (and the misdemeanors that were filed by the City
10 Attorney), regardless of whether Officer Contreras had any involvement in the
11 filing of criminal charges against Plaintiff. Further, there is no evidence that
12 Officer Contreras had any involvement in the filing of criminal charges or the
13 decision to arrest Plaintiff. Thus, Plaintiff’s claim must fail, and Defendant
14 Contreras is entitled to summary judgment on Plaintiff’s 20th claim for malicious
15 prosecution under 42 U.S.C. § 1983.

16 **VI. ADDITIONALLY, OFFICER CONTRERAS IS ENTITLED TO**
17 **QUALIFIED IMMUNITY.**

18 As set forth, *supra*, the undisputed facts and prior Court rulings already
19 conclusively establish that Officer Contreras did not violate Plaintiff’s Fourth
20 Amendment rights by using excessive force (i.e., she used no force at all) or maliciously
21 prosecuting him. Further, Officer Contreras is entitled to qualified immunity as to the
22 malicious prosecution claim.

23 Qualified immunity is a judicially-created doctrine that stems from the
24 conclusion that few individuals will enter public service if such service entails the risk
25 of personal liability for one’s official decisions. *See Wyatt v. Cole*, 504 U.S. 158, 167-
26 68 (1992). Qualified immunity balances “two important, competing interests: the need
27 to hold public officials accountable for irresponsible actions, and the need to shield
28 them from liability when they make reasonable mistakes.” *Morales v. Fry*, 873 F.3d
817, 822 (9th Cir. 2017). Qualified immunity “spare[s] a defendant not only

1 unwarranted liability, but unwarranted demands customarily imposed upon those
2 defending a long drawn-out lawsuit.” *Siebert v. Gilley*, 500 U.S. 226, 232 (1991). It is
3 an “an immunity from suit rather than a mere defense to liability.” *See Saucier v. Katz*,
4 533 U.S. 194, 200-201 (2001) (*quoting Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).
5 As a result, the Supreme Court has repeatedly stressed the importance of resolving
6 immunity questions at the earliest possible stage in litigation. *See Saucier*, at 201
7 (*quoting Hunter v. Bryant*, 502 U.S. 224, 227 (1991)).

8 Qualified immunity protects public officials, such as police officers, “who act in
9 ways they reasonably believe to be lawful.” *Garcia v. County of Merced*, 639 F.3d
10 1206, 1208 (9th Cir. 2011) (*quoting Anderson v. Creighton*, 483 U.S. 635, 641 (1987)).
11 “The qualified immunity standard ‘gives ample room for mistaken judgments’ by
12 protecting ‘all but the plainly incompetent or those who knowingly violate the law.’”
13 *Hunter*, 502 U.S. at 229 (1991) (*per curiam*) (*quoting Malley v. Briggs*, 475 U.S. 335,
14 343, 341 (1986)). “If the officer’s mistake as to what the law requires is reasonable,
15 however, the officer is entitled to the immunity defense.” *Saucier*, 533 U.S. at 205.
16 The Ninth Circuit also has held that a police officer is entitled to qualified immunity if a
17 reasonable officer could have believed, even mistakenly so, that the officer’s actions
18 were justified so long as the officer’s conclusion is objectively reasonable. *See Act*
19 *Up!/Portland v. Bagley*, 988 F.2d 868, 872 (9th Cir. 1993); *Franklin v. Fox*, 312 F.3d
20 423, 439 (9th Cir. 2002).

21 There are two prongs to the qualified immunity analysis. The courts may
22 exercise their discretion in deciding which prong to analyze first under the facts of the
23 case at bar. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Qualified immunity
24 can only be denied in instances where (1) there is a constitutional violation, and (2) the
25 constitutional right was clearly established at the time of the defendant’s actions. *See*
26 *Saucier v. Katz*, 533 U.S. 194, 200 (2001). Thus, even if there is a violation of a
27 constitutional right, in order for the courts to deny qualified immunity, it must be shown
28 that the constitutional right was clearly established in such a way that a reasonable

1 person in the defendant's shoes would have known that it clearly established. *See*
2 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Hope v. Pelzer*, 536 U.S. 730, 739
3 (2002).

4 Police officers are presumed to be protected by qualified immunity. *See Gasho v.*
5 *United States*, 39 F.3d 1420, 1438 (9th Cir. 1994). The plaintiff bears the burden of
6 proving that the constitutional right violated was clearly established at the time of the
7 alleged incident. *See Cohen v. San Bernardino Valley College*, 92 F.3d 968, 973 (9th
8 Cir. 1996). "To overcome this presumption [of qualified immunity protection], a
9 plaintiff must show that the officer's conduct was 'so egregious that any reasonable
10 person would have recognized a constitutional violation.'" *Id.* [internal citations
11 omitted]. The qualified immunity standard is a demanding one.

12 The Supreme Court has repeatedly held that the contours of the constitutional right
13 at issue must be defined with specificity. *See Kisela v. Hughes*, 138 S. Ct. 1148 (2019);
14 *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). In other words, it must be "sufficiently
15 clear that every reasonable official would have understood that what he is doing violates
16 that right." *Ashcroft*, 563 U.S. at 741. Generalities are not sufficient. *See City of*
17 *Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021); *White v. Pauly*, 137 S. Ct. 548, 552 (2017)
18 ["'clearly established' also should not be defined 'at a high level of generality.'"]. This
19 line of inquiry must be "undertaken in light of the specific context of the case, not as a
20 broad general proposition . . .," with the focus being on "whether it would be clear to a
21 reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*,
22 533 U.S. at 201. In other words, "the unlawfulness must be apparent" under applicable
23 legal precedent. *Anderson*, 483 U.S. at 640.

24 The standard is **not** whether clearly established law supported an officer's actions;
25 rather, it is whether an officer's conduct was **prohibited by** clearly established law. The
26 Supreme Court recently reminded the Ninth Circuit (and all the lower courts) of this
27 standard in analyzing qualified immunity. *See City of Escondido v. Emmons*, 139 S. Ct.
28 500, 503 (2019). While there does not need to be an identical case, existing precedent

1 must have placed the statutory or constitutional question beyond debate. *Id.* at 503.
2 “Clearly established” must be particularized to the facts of the case and “in the light of
3 pre-existing law the unlawfulness must be apparent.” *Anderson*, 483 U.S. at 640. In
4 other words, there must be an obvious connection between prior cases and the one at bar
5 such that a reasonable officer would know that his conduct violates the constitutional
6 right at issue. *See City of Tahlequah, supra*, 142 S. Ct. at 11.

7 It is not sufficient to say that it was “obviously unlawful” in the context of Fourth
8 Amendment claims. *Hopson v. Alexander*, 71 F.4th 692, 698 (9th Cir. 2023). Plaintiff
9 must prove that there is existing precedent sufficiently particularized to the facts of this
10 case which shows that Defendants’ conduct was unconstitutional. *See Hopson*, 71 F.4th
11 at 698.

12 In its order denying Plaintiff’s Motion for Partial Summary Judgment, this
13 Court analyzed the facts of this incident under the malicious prosecution
14 jurisprudence from the recent Supreme Court decision in *Chiaverini v. City of*
15 *Napoleon, Ohio*, 602 U.S. 556 (2024), which was decided less than three months
16 before this incident. Specifically, this Court considered the split of authority
17 among the Circuits between the “any-charge” versus “charge-specific” rules: “The
18 any-charge rule provided that as long as a plaintiff faced any valid charge, a single
19 meritless charge did not create a cause of action for malicious prosecution. The
20 charge-specific rule, on the other hand, requires that each and every criminal
21 charge be supported by probable cause.” (Dkt. 54 at p. 9) [internal citations
22 omitted]. Although the *Chiaverini* court ruled that the plaintiff in that case could
23 proceed on his malicious prosecution claim under the charge-specific rule, this
24 Court noted that the “Supreme Court, however, declined to decide what the proper
25 causation test is under the charge-specific rule.” *Id.*

26 Thus, as the Court already concluded in its prior order, under *Blake, supra*,
27 117 Cal. App. 4th at 557, there was probable cause to support the arrest of Plaintiff
28 and the initiation of the charge of a violation of Penal Code § 245(c). *Id.* at p. 10.

1 The undisputed facts show that Officer Contreras had no involvement in the arrest
2 or the initiation of charges against Plaintiff. UMF #13, #24. However, even if she
3 did, there was no clearly-established precedent at the time of this incident that
4 would have made the unlawfulness of Plaintiff's arrest and the charge of PC 245(c)
5 apparent under the undisputed facts of this case. Thus, even under the charge-
6 specific rule post-*Chiaverini*, Officer Contreras is shielded by the doctrine of
7 qualified immunity and is entitled to summary judgment in her favor.

8 **VII. CONCLUSION.**

9 Based on the foregoing, Defendant Contreras's motion for summary judgment
10 should be granted in its entirety.

11
12 Dated: June 13, 2025

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